

Accordingly, the service of the Notice of the Writ by means of a court process server employed by a solicitors firm in Kuala Lumpur was not an authorised method of service under the 1970 Rules.

The next submission of counsel for the plaintiff is that if the service was wrong it was merely an irregularity which can be amended under Order 2 rule 2 of the 1970 Rules on the ground that the defendant, having been actually served with the Notice of the Writ and entered appearance, has not suffered any prejudice. There is no substance in this argument. By effecting service of the Notice of the Writ without complying with rule 5(8) or rule 6(2) of Order 11, the plaintiff has in fact disregarded the legal basis upon which the judicial power in Singapore may be exercised in Malaysia. That must render the purported service a nullity.

For these reasons, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Advani Hoo Morris & Kumar; Ang & Partners.*

JAYA KUMAR v. SUBRAMANIAM MOHANA KRISHNAN & ANOR.

[A.C.J. (Thean J.) June 3, 1987]

[Singapore – D.C. Suit No. 12000 of 1986]

Practice and Procedure – Summary judgment application – Defendants claimed plaintiff in default for failing to register business – Whether plaintiff's application allowed – Subordinate Courts Rules, 1986, O.14 – Business Registration Act (Cap. 32, 1985 Ed.) s. 17(1).

Contract – Claim for sum owed – Failure of plaintiff to register business – Whether plaintiff disabled from enforcing his rights under Deed – Business Registration Act (Cap. 32, 1985 Ed.), s. 17(1).

This was an appeal by the plaintiff against the decision of the Deputy Registrar of the Subordinate Courts in which, upon an application by the plaintiff for summary judgment against the first defendant, the Deputy Registrar granted the defendant conditional leave to defend the action.

The plaintiff claimed against the first defendant under a Deed dated July 8, 1986 made between the second defendant, the first defendant and the plaintiff. It was recited in the Deed that (i) the plaintiff had been carrying on the business of the basement lounge at Indian Association" since June 1, 1985; (ii) the plaintiff had transferred the said business to the second defendant on December 16, 1985; (iii) in consideration of the transfer, the second defendant had agreed to pay to the plaintiff a sum of \$24,000 of which a balance sum of \$11,250 was then still owing and unpaid by the second defendant and (iv) the second defendant had transferred the said business to the first defendant on April 2, 1986.

The first defendant did not deny that he had failed to pay to the plaintiff the sum of \$11,250 or any part thereof.

The first defendant contended, *inter alia*, that the plaintiff did not at the time when he carried on the business register his business under the Business Registration Act (Cap. 32, 1985 Ed.) ("the said Act") and therefore he could not under section 17(1) of the said Act enforce his rights under the Deed against the first defendant.

Held, allowing the appeal: (1) where the issue raised was one of law and it was clear-cut and could be decided upon, then the judge hearing it, or, upon an appeal, the appellate court, should decide on it rather than to let it go to trial;

(2) section 17(1) of the said Act did not apply to the contract as the contract contained in the Deed was not made or entered into at any time while the plaintiff was in default;

(3) section 17(1) of the Business Registration Act did not disable the plaintiff from enforcing his rights under the Deed against the first defendant. The first defendant therefore had no defence to the claim.

Cases referred to:

- (1) *Verrall v. Great Yarmouth Borough Council* [1981] Q.B. 202, 218.
- (2) *European Asian Bank A.G. v. Punjab & Sind Bank* (No. 2) [1983] 1 W.L.R. 642, 654.
- (3) *Re Debtor* (No. 5 of 1919) (1919) 89 L.J.K.B. 40.

APPEAL FROM REGISTRAR.

Gopalan Nair for the plaintiff.

M.P. Kanisan for the first defendant.

Cur. Adv. Vult.

Thean J.: This is an appeal by the plaintiff against the decision of the Deputy Registrar of the Subordinate Courts in which, upon an application by the plaintiff under Order 14 of the Subordinate Courts Rules, 1986 for summary judgment against the 1st defendant, the Deputy Registrar gave unconditional leave to the latter to defend this action. The action was brought by the plaintiff

against the 1st defendant and the 2nd defendant, claiming for a sum of \$11,250, and this appeal relates only to the claim against the 1st defendant. The plaintiff's claim against the 1st defendant is founded on a Deed dated July 8, 1986 ("the Deed"), made between the 2nd defendant of the first part, the 1st defendant of the second part and the plaintiff of the third part. It was recited in the Deed that: (i) the plaintiff had been carrying on "the business of the basement lounge at Indian Association" since June 1, 1985, or thereabout – the business as subsequently deposed to in the affidavits filed was that of a restaurant; (ii) the plaintiff had transferred the said business to the 2nd defendant on December 16, 1985, or thereabout; (iii) in consideration of the transfer, the 2nd defendant had agreed to pay to the plaintiff a sum of \$24,000, of which a balance sum of \$11,250 was then still owing and unpaid by the 2nd defendant, and (iv) the 2nd defendant had transferred the said business to the 1st defendant on April 2, 1986, for a consideration consisting of a sum of \$11,250 and a further sum to be agreed between the 2nd defendant and 1st defendant. By the Deed, the 1st defendant agreed to pay to the plaintiff the sum of \$11,250 in the following manner, that is to say, \$6,000 on or before July 31, 1986, and the balance by monthly instalments of \$1,200 each on or before the end of each month, commencing in August 1986, until the whole of the balance sum is fully paid. It is the claim of the plaintiff, which is not denied by the 1st defendant, that the 1st defendant has failed to pay to the plaintiff the sum of \$11,250 or any part thereof.

Both before the Deputy Registrar and before me, counsel for the 1st defendant raised several defences. First, the 1st defendant said in his affidavit that he agreed to take over the restaurant business from the 2nd defendant on the following conditions, namely:

- (a) that the restaurant at the basement of the premises of Indian Association had to be transferred to the 1st defendant;
- (b) that the lease from the landlord should also be transferred to him, and
- (c) that the 2nd defendant had a valid licence to operate the restaurant.

Assuming these are the terms or conditions agreed upon, conditional on which the Deed was made, they were agreed upon between the 2nd defendant

A and the 1st defendant, and they did not concern the plaintiff; the plaintiff had by that time transferred the business to the 2nd defendant. Next the 1st defendant said that the plaintiff also agreed to these terms or conditions, as the 2nd defendant was his sub-tenant and both the plaintiff and the 2nd defendant assured him (the 1st defendant) that the lease of the restaurant would be transferred to him. In consideration of this, said the 1st defendant, he signed the Deed. Such an allegation has been demonstrated by the plaintiff in his affidavit to be clearly unsustainable. The Indian Association did not provide any lease to any caterer operating a restaurant at the basement; the Association granted only a licence. On May 7, 1985, the administrative officer of the Association had confirmed to the 1st defendant that its management committee would grant a licence to the 1st defendant to operate the restaurant and bar "on terms and conditions mutually agreed upon" between the 1st defendant and the committee and that a licence agreement would be forwarded to him for execution. At any rate, at the time of the execution of the Deed, the 1st defendant had been carrying on the business for about three months and if these were terms or conditions which had been agreed as alleged by him and which at that time had not been satisfied it is difficult to understand why the 1st defendant as a businessman would or should sign the Deed as he did. The 1st defendant made only bare allegations without anything in support and his defences based on these allegations have no merit and I have no hesitation in rejecting them.

There is, however, one defence raised on behalf of the 1st defendant that merits serious consideration: the plaintiff did not at the time when he carried on the business register his business under the Business Registration Act (Cap. 32, 1985 Ed.) and it is contended that on that ground the plaintiff cannot under section 17(1) of the Act enforce his rights under the Deed against the 1st defendant. This, it is submitted, is a triable issue and the case should therefore go to trial. I agree that this is an issue, but on reflection, I think such an issue can and should be disposed of now and I should not let it go to trial where the same point would be re-argued with a possibility of another appeal. It has been repeatedly held by the Court of Appeal in England that on an application under Order 14 where the issue raised is one of law and it is clear-cut and can be decided upon, then the judge hearing it, or, upon an appeal, the Court of Appeal, should decide on it rather than to let it go to trial. In *Verrall v. Great Yarmouth Borough Council*,⁽¹⁾ Roskill L.J. (as he then was) said:

"... We have often said in this court in recent years that where there is a clear-cut issue raised in Order 14 proceedings, there is no reason why the judge in Chambers – or, for that matter, this court – should not deal with the whole matter at once. Merely to order a trial so that the matters can be re-argued in open court is to encourage the law's delays which in this court we are always trying to prevent. The first point fails."

Similar observations were made by Robert Goff L. J. (as he then was) in *European Asian Bank A.G. v. Punjab & Sind Bank (No. 2)*⁽²⁾:

"... Moreover, at least since *Cow v. Casey* [1949] 1 K.B. 474, this court has made it plain that it will not hesitate, in an appropriate case, to decide questions of law under R.S. C., Ord. 14, even if the question of law is at first blush of some complexity and therefore takes "a little longer to understand." It may offend against the whole purpose of Order 14 not to decide a case which raises a clear-cut issue, when full argument has been addressed to the court, and the only result of not deciding it will be that the case will go for trial and the argument will be rehearsed all over again before a judge, with the possibility of yet another appeal; see *Verrall v. Great Yarmouth Borough Council* [1981] Q. B. 202, 215, 218, per Lord Denning M.R. and Roskill L.J. The policy of Order 14 is to prevent delay in cases where there is no defence; and this policy is, if anything, reinforced in a case such as the present, concerned as it is with a claim by a negotiating bank under a letter of credit: compare *Bank für Gemeinwirtschaft Aktiengesellschaft v. City of London Garages Ltd.* [1971] 1 W.L.R. 149, 158, per Cairns L.J., a case concerned with a claim on a bill of exchange by a holder in due course."

The question really is whether, on the facts before me, which are not in dispute, the provision of section 17(1) of the Act is applicable and this turns on the construction of such provision. Section 17(1) provides as follows:

"Where a person required to be registered under this Act –

- (a) carries on business without a valid certificate of registration; or
- (b) fails to furnish any information required under section 12,

then the rights of the defaulter under or arising out of any contract, in relation to the business carried on by the defaulter in respect of which no valid certificate of registration is in force or there is non-compliance with section 12, made or entered into by or on behalf of the defaulter at any time while he is in default shall, subject to subsection (2), not be enforceable by action or other legal proceedings either in the business name or otherwise."

It is clear, in my view, that section 17(1) of the Act, on a true construction, applies only to contracts in relation to the business concerned which are made or entered into by or on behalf of the defaulter at any time while he is in default; contracts in relation to such business made at other

- A time when the defaulter is not in default are not caught by this provision. On the facts, there is no dispute that throughout the period when he carried on the restaurant business at the basement of the Indian Association's premises, the plaintiff did not register his business under the Act. It is also not in dispute that the plaintiff had transferred that business to the 2nd defendant on December 16, 1985 and the 2nd defendant in turn had transferred the business to the 1st defendant on April 2, 1986, and about three months after the second transfer, on July 8, 1986, the three parties executed the Deed. At the time of the execution of the Deed, the 1st defendant, and not the plaintiff, was carrying on the restaurant business at the basement of the Indian Association's premises. At that time, the plaintiff was not in default under either paragraph (a) or paragraph (b) of section 17(1) of the Act.
- B Hence, the contract contained in the Deed was not made or entered into at any time while the plaintiff was in default; and it must follow that section 17(1) of the Act does not apply to the contract.

I am reinforced in my view by the decision in *Re Debtor (No. 5 of 1919)*.⁽³⁾ The statutory provision for consideration in that case was section 8 of the Registration of Business Names Act, 1916 of the United Kingdom, which, so far as relevant, was as follows:

- E "Where any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall have made default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars were required to be furnished at any time while he is in default shall not be enforceable by action or other legal proceeding either in the business name or otherwise: ..."

G There, a creditor, by the name Shaffer, entered into a contract with a debtor and took a bill from the latter. The bill was taken at the time when Shaffer did not register his business under the Act but the period for registration had not elapsed. The Court held that the contract was not a contract made by Shaffer while he was in default, as the period for registration had not elapsed, and he could therefore sue or enforce the contract. Horridge J. said, at page 42.

- I "Here Shaffer made the contract when he was not in default. He made it during the period allowed to him to register, and, not being then in default, he was, in my view, not prevented from enforcing the contract."

Sankey J. agreed and said, at page 42:

"In my view, that section has to be construed as meaning

that the right of a person under a contract made at any time while he was in default shall not be enforceable by action. That being the construction, in my view, it is only necessary to say that the contract in this case was not such an one. Shaffer was not in default at the time he made the contract."

In my judgment, section 17(1) of the Business Registration Act does not disable the plaintiff from enforcing his rights under the Deed against the 1st defendant as contended on behalf of the 1st defendant. The 1st defendant therefore has no defence to the claim. Accordingly, I allow the appeal, set aside the order made by the Deputy Registrar, and order that judgment be entered for the plaintiff in the sum as claimed in the Statement of Claim with interest at 8% per annum from the date of issue of the writ to the date of judgment and costs. The 1st defendant will have to pay the costs of this appeal and the costs of the application before the Deputy Registrar.

Appeal allowed.

Solicitors: *Gopalan Nair; Selvadurai Pala Krishnan & Partners.*

GRACIE TEO v. TAY LENG HONG & ORS.

[A.C.J. (Thean J.) June 12, 1987]

[Singapore — District Court Appeal No. 15 of 1984]

Landlord and Tenant — Tenant holding over — Claim for arrears of rent and vacant possession — Civil Law Act (Cap. 30, 1970 Ed. now Cap. 43, 1985 Ed.), s.17(4).

Practice and Procedure — Statement of Claim — Amendment to add fourth plaintiff to — Date of effect — Subordinate Courts Rules, 1970, O.8 r.8(3) — R.S.C. (U.K.), O.15 r.8(4)(a).

Landlord and Tenant — Tenant spent money to improve premises in return for non-increase in rent — No equitable right to retain possession of premises.

The first, second and third defendants were the executors of the will of the late Lim Sin Lock deceased, who at the date of death was the owner of the premises at No.11K, Jalan Sayang, Singapore ("the said premises"). The defendant was a tenant of the said premises paying a monthly rent of \$40. She became a tenant thereof in 1971.

On October 19, 1979, the solicitors acting for the first and second plaintiffs as executors of the will of Lim Sin

A Lock deceased gave to the defendant a notice to quit and deliver vacant possession of the said premises on or before November 30, 1979. After the expiry of the notice, the defendant remained in possession of the said premises and refused to quit. On May 19, 1980, the first, second and third plaintiffs commenced action in the District Court claiming for arrears of rent due, mesne profits for holding over the said premises from December 1, 1979, and vacant possession of the said premises.

B After the action had been commenced, the first, second and third plaintiffs sold the premises to one Ng Chwee Yen, who subsequently sold them to M/S Davis Development Pte. Ltd. Subsequently the first, second and third defendants applied for and obtained an order dated November 8, 1983, joining M/S Davis Development as the fourth plaintiff in the action. The Statement of Claim was amended accordingly. The first, second and third plaintiffs claimed for the balance of the arrears of rent due amounting to a sum of \$2,160 and mesne profits for holding over the said premises from December 1, 1979 to March 1983 at the rate of \$80 per month and the fourth plaintiff claimed possession of the said premises and an amount for use and occupation of the said premises at the rate of \$80 per month with effect from June 15, 1983 to the date of delivery of possession of the said premises. The defendant amended her Defence which was filed and delivered on December 3, 1983.

C Immediately before the commencement of the trial on January 30, 1984, the defendant applied for an order that the fourth plaintiff be struck out as a party to the action on the ground that it had no cause of action at the date when the action was commenced. The learned District Judge dismissed the application. At the trial the learned District Judge found that (a) the said premises were not the premises within the Control of Rent Act; (b) no irrevocable tenancy of the said premises for a term of 30 years had been granted to the defendants; (c) the defendant had no equitable right to retain possession of the said premises. However, on the facts, he held that the defendant had spent a sum of \$2,000 in improving the said premises at the material time with knowledge and consent of the plaintiffs in view thereof the defendant had an equity in the said premises which ought to be satisfied.

D He gave (i) judgment to the first, second and third plaintiffs in the sum of \$1,600 being the mesne profits at the rate of \$40 per month with effect from December 1, 1979 to March 1983 and awarded costs of £1,147 to them; and (ii) judgment to the fourth plaintiff for the recovery of possession of the said premises to be delivered on or before April 30, 1984, and he ordered the fourth plaintiff to pay a sum of \$2,000 to the defendant in satisfaction of her equity, such sum to be paid before she delivered vacant possession of the said premises on or before April 30, 1984. The defendant was ordered to pay the fourth plaintiff a sum of \$40 p.m. for the use and occupation of the said premises with effect from June 15, 1983 to the date of delivery of possession. The defendant was also ordered to quit the premises on or before April 30, 1984.

The defendant appealed.

Held, dismissing the appeal: (1) the fourth plaintiff did not become a party with effect retrospectively at the commencement of the action but on or immediately after the date the order adding it as a party was made. As of that